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No.: 06-1607

In The

# Supreme Court of the United States

ABDELHADI ABUSHEIKH,
(Alien No.: 043-247-552)

*Petitioner,*

V.

PETER D. KEISLER, ACTING ATTORNEY GENERAL; MICHAEL GARCIA, ASSISTANCE SECRETARY DEPARTMENT OF HOMELAND SECURITY-BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT; JAMES JOHNSTON, DISTRICT DIRECTOR BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT; BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT,

*Respondents.*

ON PETITION FOR A REHEARING TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

## PETITION FOR A REHEARING

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Phone: (973) 279-1622

## FACTS

The Petitioner, Abdelhadi Abusheikh (Petitioner) lawfully entered the United States in 1989, and later was joined by his wife and children. In 2002 the Petitioner was arrested by Immigration and Customs Enforcement (ICE), for overstaying his visa. At Immigration Court the Petitioner sought a waiver to deportation under 8 U.S.C. § 1226 (b) (i), which was denied by an immigration judge.

An appeal filed with the Board of Immigration Appeals was denied as well. Thereafter, the Petitioner attempted to get a travel document from the Israeli Embassy. They denied his request. He then approached the Jordanian Embassy who also refused to grant the Petitioner a travel document. The reason both countries denied his request was because the Petitioner is a Palestinian from the West Bank. Both nations have policies that don't favor Palestinians.

After being informed that both countries listed on his deportation order would not accept his return, the Petitioner filed motions to both the BIA and the Immigration Court. The motions were to Reopen the Proceedings, these applications were summarily denied by Immigration Courts. No written opinions were rendered. No hearings were granted. An appeal filed with the District Court was transferred to the Third Circuit Court of Appeals based on the Real ID Act.

The Third Circuit Court of Appeals issued a written decision. In reading the decision however, it is obvious that the Court did not consider essential facts. In fact, many facts were not considered at all. These essential facts would have changed the ruling under the law.

## ISSUE

## WAS THE PETITIONER DENIED HIS RIGHT TO DUE PROCESS

The rehearing was filed because the Petitioner literally cannot depart the United States. The argument below should show that the Petitioner is stateless. Repeated pleas to the former INS, and the Courts below, were unheeded. The United States constitution has protected people like the Petitioner. The Petitioner seeks help from this Honorable Court to make sure his Constitutional Rights are protected.

We contended that the Petitioner was denied fundamental Due Process by the Court below for not granting a hearing. The motions filed to Reopen Proceedings were in accord with Court Rules. The motions were with merit but were summarily denied by the tribunals below that reviewed this matter.

This Court has stated that undocumented individuals are entitled to constitutional protections. That holding is being violated in this case. Denial of a hearing is a serious breach of fundamental constitutional principles.

The due process clause under the Fifth Amendment essentially guarantees individuals with a fair hearing. Based on the facts presented, which were know to the Court below, denial in granting the Petitioner a hearing was unconstitutional. He was entitled to a hearing under the law.

When an individual is ordered deported, there are two means for their removal from the United States. One may voluntary depart the country, or, the individual may be escorted out of the country. The Petitioner here was granted voluntary departure. He cannot comply with the

order because of his inability to travel. The Respondents had confiscated bails he posted because he did not depart the United States.

The Petitioner is unable to get travel documents. The Petitioner is a Palestinian who comes from the West Bank. He has not lived there in 17 years. To return to the West Bank the Petitioner must travel to Jordan or Israel. The Israelis, who had issued the travel document 17 years ago, refused to provide the Petitioner with a travel document which is the only means of returning to the West Bank via Israel.

Attempts were made by the Petitioner to seek travel documents from Jordan as well. He could try to enter the West Bank from there. The Jordanians refused to provide the travel document. The Petitioner's inability to return or depart the United States is not due to any fault on his part.

There is no ruling by this Honorable Court, or a statute enacted, that removes constitutional protections to undocumented individuals. The Right to Due Process, based on the circumstances in this case, are being disregarded.

Every Court either claimed that it lacks jurisdiction or simply had denied motions to reopen removal proceedings. Under this scenario the Petitioner was deprived of his Due Process rights. In previous stages of this litigation, the Respondent had not disputed the Petitioner's claim of being unable to depart the United States.

The deportation order has evolved into a document that essentially deprives the Petitioner of his Constitutional rights. The reality is that three countries, the United States, Jordan, and Israel do not want the Petitioner to reside in their respective nations. Therefore, he cannot comply with the deportation order because of impossibility.

In accordance with Rules of Court, the Petitioner filed all motions, documents, and appeals in a timely fashion. Regrettably, the Real ID Act removed a level of review for individuals, such as the Petitioner. The courts that have reviewed the Petitioner's case have consistently denied the Petitioner with a forum to bring forth his prayer for relief.

Subsequent to entry of the deportation order, no court had granted the Petitioner with an opportunity, or a forum, to explain his personal circumstances. The reality is that there is nothing that the United States can do in deporting Palestinians while Jordan and Israel maintain their war mode. Therefore, the Petitioner deserves to live with dignity, and peace of mind by not living in fear, in not having legal status.

It would seem that as a result of the recent mass immigration arrests, a ruling on the status of stateless individuals would be of assistance for future Courts to use as a guide. Under the circumstances of this case, the lower Courts knew of the Petitioner's situation, and refused to hear the motions he filed. This is troubling since Courts are the only place where individuals can turn to seek justice.

This petition for rehearing to the denial for a Writ of Certiorari was filed because the Petitioner had no alternative. He constantly faces the threat of arrest by Immigration. It is impossible for the Petitioner to comply with the Deportation order. The appendences herein contain evidence of the Petitioner's contentions.

The opinion from the Court of Appeals did not address the issues raised by the Petitioner. The analysis by the Court blatantly shows the Court misread the facts of this case, and misunderstood what relief was sought from the

Court. A misreading of an application for relief has a chilling effect on constitutional protections.

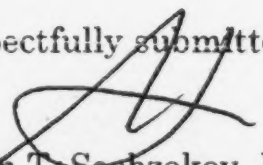
In the final analysis there is nothing the Petitioner can do to change his predicament. He attempted to seek relief from immigration Court and BIA who did not render decisions for their denials. As a result the Petitioner's road to appeals lead him to this Honorable Court's doors.

## CONCLUSION

For all the foregoing reasons, the petitioner respectfully requests that the Supreme Court grant rehearing on this matter.

Dated: October 23, 2007

Respectfully submitted,



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## CERTIFICATION OF COUNSEL

Aslan T. Soobzokov respectfully hereby certify and states as follows:

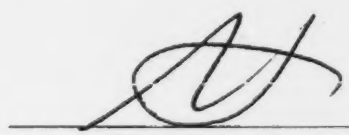
1. I am an attorney licensed to practice law in the State of New Jersey.

2. I represent the Petitioner, Abdelhadi H. Abu-Sheikh since the inception of his Immigration proceedings.

3. This Petition for Rehearing is presented in Good Faith and not for any delay.

I certify that the above statements made by me are true. I am aware that if any of the above statements made by me are willfully false, I am subject to punishment.

Date: October 23, 2007



Aslan T. Soobzokov